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Federal Communications Commission

DA 98-850

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-194
Table of Allotments,) RM-9128
FM Broadcast Stations.)
(Shelley and Island Park, Idaho))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 29, 1998

Released: May 8, 1998

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making* ("Notice"), 12 FCC Rcd 13718 (1997), issued in response to a petition for rule making filed on behalf of Woodcom, Inc. ("petitioner"), permittee of a new FM station to operate on Channel 300C at Shelley, Idaho (File No. BPH-950123MH), proposing the substitution of Channel 292C1 for Channel 300C at Shelley, and modification of its authorization accordingly.¹ Additionally, to accommodate the proposed modification at Shelley, petitioner also proposed the substitution of Channel 300C for Channel 293C at Island Park, Idaho.² Petitioner filed supporting comments. Comments were also filed on behalf of Alpine.³ No additional comments were filed.

2. The *Notice* advised that the petitioner's proposal is premised on its desire to locate the transmitter for the proposed new FM station at Shelley at an existing electronics site. In support, petitioner advised that its proposal would avoid the need to construct another tall tower in the

¹The Notice also stated that Channel 288C1 could be allotted to Shelley in the event competing expressions of interest in Channel 292C1 at that community were filed.

²The Notice acknowledged that a first-come/first-served application to operate on Channel 293C at Island Park, Idaho, had been filed by Alpine Broadcasting, Ltd. ("Alpine"), specifying coordinates 44-10-31 and 111-25-47 (File No. BPH-961023MJ). Alpine advises that its application was subsequently amended on August 7, 1997 in response to a Commission letter, and again on August 29, 1997, pursuant to Section 1.65 of the Commission's Rules. The allotment reference coordinates for Channel 293C at Island Park are 44-23-30 and 111-18-42; those currently specified at Alpine's application site for Channel 293C are 44-33-39 and 111-26-24.

³Alpine's comments were titled "Comments and Counterproposal." However, they have not been treated as a counterproposal. A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made. See, e.g., *Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931 (1990). Alpine's comments contain an alternate channel for allotment to Island Park to accommodate its pending application, which is discussed *infra*.

area, and thereby lessen the environmental, aeronautical and esthetic impacts. In further support of its proposal, petitioner advised that its present authorization on Channel 300C cannot be implemented at its desired electronics site in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.

3. In response to the *Notice* Alpine requests that Channel 275C rather than Channel 300C be substituted for Channel 293C at Island Park. Alpine advises that its pending application for Channel 293C (File No. BPH-961023MJ) specifies operation at an established electronics site that is located less than 1 kilometer from an existing FAA radio facility. As a result, Alpine asserts that the substitution of Channel 300C (107.9 MHz) for Channel 293C, as proposed in the *Notice*, would not be conducive to the public interest as the normal bandwidth/emission limitations for FM broadcast stations would result in the potential for significant energy emission above 108 MHz.⁴ Alpine advises that Channel 275C can be substituted for existing Channel 293C at Island Park, consistent with the Commission's technical requirements, utilizing the allotment reference coordinates therefor at 44-23-30 NL and 111-18-42 WL.⁵ Alpine states that if Channel 275C is allotted to Island Park as a replacement for Channel 293C, it will promptly amend its application and if authorized, construct a station to operate thereon.

4. In consideration of the above, we will substitute Channel 292C1 for Channel 300C at Shelly, Idaho, and modify the petitioner's authorization (File No. BPH-950123MH) accordingly. The modification will enable petitioner to provide FM service to Shelley from an established electronics site, resulting in a benefit not presently available to it on Channel 300 due to spacing constraints. As to the requested substitution at Island Park to accommodate the Shelley allotment, we believe that based upon Alpine's engineering study, the use of proposed Channel 300C would not be an efficient utilization of the frequency, given its nearness to an existing FAA radio facility. Therefore, we will substitute Channel 275C for Channel 293C at Island Park, as proposed by Alpine.

5. Channel 292C1 can be allotted to Shelley in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, at the petitioner's specified site located 42.3 kilometers (26.3 miles) southwest of the community at coordinates 43-06-45 and 112-29-34. Channel 275C can be allotted to Island Park consistent with the technical requirements of the Commission's Rules at the city reference location at coordinates 44-23-30 and 111-18-42.⁶

⁴The frequency 108.0 MHz may be assigned to VOR test stations subject to the condition that interference is not caused to the reception of FM broadcasting stations, present or future.

⁵Alpine also remarks that Channel 275C complies with Sections 73.207(b) and 73.315 of the Commission's Rules at the site specified in its application for Channel 293C at Island Park.

⁶Channel 275C at Island Park may also be utilized at the transmitter site specified in Alpine's pending application for Channel 293C at coordinates 44-33-39 and 111-26-24.

6. As indicated in the *Notice*, in view of the substitution at Island Park, Alpine will be allowed to amend its application (File No. BPH-961023MJ) without loss of cut-off protection. However, in light of Alpine's applicant status, it is not entitled to any reimbursement. *See Pacific Grove and Soledad, California*, 5 FCC Rcd 6700 (1990).

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 22, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Island Park, Idaho	275C
Shelley, Idaho	292C1

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization issued to Woodcom, Inc. (File No. BPH-950123MH), Shelley, Idaho, IS MODIFIED to specify operation on Channel 292C1 in lieu of Channel 300C, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the following:

Woodcom, Inc.		Alpine Broadcasting, Ltd.
301 D Street, Suite 302	and	c/o Haley, Bader & Potts
Lewiston, ID		4350 North Fairfax Dr.
		Arlington, VA 22203

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau